

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

60109

FILE: B-184957

DATE: October 31, 1975

MATTER OF: ITT Building Services

97586

DIGEST:

1. Protest filed after bid opening against total small business set-aside is untimely since GAO Bid Protest Procedures require protests against alleged defects apparent on face of invitation to be filed prior to bid opening.
2. Allegation that bidders cannot meet minimum daily man-hour requirement essentially involves the responsibility of the bidders and therefore will not be considered since this Office has discontinued practice of reviewing bid protests against contracting officer's affirmative responsibility determinations unless there is showing of fraud.

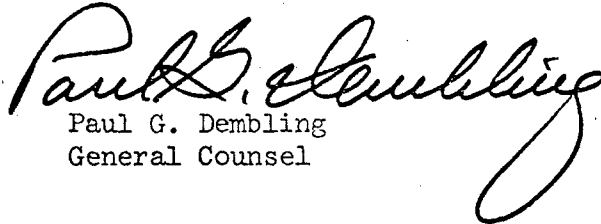
ITT Building Services (ITT) has protested against invitation for bids (IFB) No. 3-714650, issued by the Lewis Research Center of the National Aeronautics and Space Administration. The IFB calls for janitorial services and is a total small business set-aside. ITT alleges that the set-aside is inappropriate because it calls for services which cannot be provided by a small business concern. ITT further objects to award under the IFB on the grounds that none of the bidders can meet the minimum daily man-hour requirements in view of the specified wage rates included in the IFB.

Bids were opened on September 16, 1975. ITT's letter of protest was dated September 18, 1975 and was filed with our Office on September 19. Section 20.2 of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975), provides that protests based upon alleged improprieties in any type of solicitation which are apparent prior to bid opening shall be filed prior to bid opening. Therefore, any protest against the set-aside provisions of the IFB should have been filed prior to bid opening. Since the ITT protest was filed three days after bid opening, this aspect of the protest is untimely. Society Brand, Incorporated, B-184400, August 7, 1975, 75-2 CPD 91.

ITT's other allegation essentially concerns the responsibility of the bidders and their eligibility for contract award. This Office has discontinued its prior practice of reviewing bid protests

involving a contracting officer's affirmative determination of responsibility of prospective contractors since such determinations are largely a matter of business judgment properly within the discretion of the procuring officials. United Hatters, Cap and Millinery Workers International Union, 53 Comp. Gen. 931 (1974), 74-1 CPD 310. If, pursuant to the applicable regulations, the contracting officer finds the prospective contractors responsible, we do not believe the findings should be disturbed except for actions by procuring officials which are tantamount to fraud. Central Metal Products, Inc., 54 Comp. Gen. 66 (1974), 74-2 CPD 64. Since no fraud has been alleged or demonstrated, we must decline to consider the matter.

Accordingly, we will not consider this matter.


Paul G. Dembling
General Counsel